

PRO-SE PACKET

GUARDIANSHIP – INCAPACITATED PERSON

This packet describes the steps necessary to establish a guardianship of an incapacitated **person**. Information is provided on preparing documents and presenting them for filing. Samples of the basic forms are also included.

We strongly recommend that you seek the services of an attorney. The Lawyer Referral and Information Service (537-9140) of the Hawai'i State Bar Association may be able to provide names of attorneys, but they do not have information on any fees charged by the attorneys.

Volunteer Legal Services (528-7046) offers assistance to people with low incomes who meet their financial criteria. You may also consult the yellow pages of the telephone book for attorneys who specialize in family law.

Should you decide to proceed on your own without the assistance of an attorney, you may wish to review sections 560:1-403 and 560:5-301 to 560:5-312 of the Hawai'i Revised Statutes pertaining to Guardians of the Person of Incapacitated Persons. You are responsible for assuring that your documents comply with Rule 3 of the Rules of the Circuit Court, applicable Hawai'i Family Court Rules and applicable sections of the Hawai'i Revised Statutes as well as any memoranda issued by the Family Court.

Copies of these statutes, rules and memoranda are available at the Hawai'i Supreme Court Law Library - 417 South King Street, behind the King Kamehameha statue). A manual entitled Guidelines for Guardianship in Hawaii - A Legal Manual, 1987 by the Protection and Advocacy Agency of Hawaii is also available at the Supreme Court Law Library. However, please note that sections of the manual may be outdated.

Overview of Documents in this Packet

This packet includes samples of the following forms. Should you wish to have more than one person serve as co-guardians, you will need to amend the pertinent portions of the documents to show that this is a co-guardianship case.

1) "**Petition for Appointment of a Guardian...**" states the factual and legal basis for the appointment of a guardian and asks the court to issue an Order Appointing a Guardian of the Person and Letters of Guardianship.

2) "**Notice of Hearing**" is attached to the Petition. Court personnel will schedule the hearing and fill in the blank spaces for the date and time of hearing.

3) "**List of Exhibits**" - this cover sheet organizes supporting documents, such as a Physician's Report, that are submitted at the time of filing the Petition. Documents that are attached to this cover sheet and submitted as exhibits must be original copies.

4) "**Waiver of Notice and Consent to Guardianship**" informs the court that a person, who is entitled to receive notice, agrees to have the guardianship proceedings take place without his or her involvement. This document may be filed to support the Petition for Appointment of Guardian. The proposed guardian is always expected to attend the hearing, unless previously excused by the court. The alleged incapacitated person cannot waive notice of the hearing.

This form allows interested parties to be able to waive the requirement that they be given at least 14-days advance notice of the hearing on the Petition. It also has a check off box if the interested party wants to waive notice of any future hearings.

5) **Order Appointing Guardian** - contains the Judge's findings and states, among other things, the conditions under which the guardian shall serve and the events that will terminate the guardianship.

6) **Letters of Guardianship** - serves as proof of the guardian's appointment and restates certain items that are included in the Order Appointing Guardian, other than the Court's findings.

How to Prepare Documents for Filing

Use the forms that are attached to this packet **only** as a guide. They are not meant to be filled in for your use. You must **re-type the document** and insert the relevant information by adjusting or deleting phrases shown in "(parentheses)" as they apply to your situation.

A "No-Bounce" filing policy currently in effect in the First Circuit Court requires the court's staff to accept documents for filing even if they are submitted incorrectly. They are not allowed to give legal advice. If there are any statutory deficiencies in the documents you submit, it may affect the granting of the guardianship at the hearing.

Typing All documents must be typed in black ink using **pica** size print. Elite size print is not acceptable. The top and bottom margins must be 1". The left and right-hand margins shall not be less than 1". The name of the court shall be centered and be not less than 3" from the top of the page.

Signature Documents must be dated and **signed in black ink**.

Name Be sure to type the Petitioner's name, address and phone number in the upper left-hand corner of the first page of each document. A phone number is important so that the court can call and notify you that your documents are ready to be picked up for filing. The Court will not file the documents for you.

Copies Make a sufficient number of copies (see below). You may wish to put together several sets of (1) the Petition for Appointment of Guardian of the Person and (2) the Notice of Time and Place of Hearing. Staple both of them together in the left and right upper corners. Do the same for each set you have. Each stapled set will be filed as one document.

Presenting Documents for Initial Filing

After completing all of the necessary forms, present the original copy plus the necessary number of copies to one of the clerks at the counter in the **Family Court's Court Management Services Branch, 2nd floor of the Circuit Court Building located at 777 Punchbowl Street**. You must leave the documents for processing and you will be contacted--by telephone--to pickup the documents. Again, we emphasize the importance of including your telephone number on all documents turned in to the court.

When you pick up the documents, you will notice that the date and time of the hearing has been filled in on the original copy only of the Notice of Hearing. You must "conform" (copy) and fill in the information on all of the other sets you submitted. You may do this by writing in or stamping the information that the court added to the original document. Be sure that the information is exactly the same as on the original. As an alternative, you may photocopy the documents after you pick them up from the court.

Present the original and all copies to a Documents Receiving Clerk in the **Legal Documents Branch** on the first floor of the First Circuit Court building. Submit as many copies as you need to give to the persons who must receive notice (see H.R.S. Section 560:5-309), including yourself. A \$100.00 filing fee is required to file the Petition. In addition, a \$25.00 surcharge will be collected for a special Indigent Legal Services Fund. Filing fees may be paid in person by cash, cashier's check or money order. Please make all cashier's checks or money orders payable to "Chief Clerk, First Circuit Court".

If you are paying by cashier's check or money order the Documents Receiving Clerk will accept your cashier's check or money order, assign a case number and file your documents and return copies to you. A receipt will be mailed to the filing party within 48 hours to confirm the payment.

If you are paying in cash, the Documents Receiving Clerk will assign a case number and direct you to the Cashier's Section to pay the filing fee and surcharge. After you have paid your fees, return to the Legal Documents Branch counter to have your documents filed.

It is preferable that certified copies of your documents be served on the parties. The Documents Receiving Clerk will certify as many copies as requested at the time of filing of your documents.

Service of the Documents

You must serve copies of the “**Petition for Guardianship**” and the “**Notice of Hearing**” on all parties entitled to notice under H.R.S. §560:5-309 by the appropriate method of service as described in that section and in H.R.S. §560:1-401, and in Rule 4 of the Hawai'i Family Court Rules. You are reminded that in all cases, the incapacitated person must be served personally.

After the Hearing

If the Court appoints a guardian and orders that Letters of Guardianship be issued, the Petitioner prepares an **Order Appointing Guardian** and **Letters of Guardianship** and submits them to the court for the Judge's signature within ten (10) days after the hearing unless otherwise requested. After the Order and Letters have been signed, the court will advise you to pick up the documents or they will mail them back to you if you had provided them with a stamped, self-addressed envelope. You will be responsible for filing the documents in the Legal Documents Branch. The court will not file the documents for you.

Sample Documents

Attached are some basic forms. Original documents should be printed on one side only even though the samples may be printed on both sides. You may also need other forms that are not part of this packet. The samples that are attached are provided only as a guide and are designed to meet the legal requirements. Parties or agencies who wish to amend or alter these documents may do so as long as the results are consistent with statutory requirements. Please seek legal counsel if you have any questions.

Pro Se Petitioner's Name (or Attorney's Name and Number):

Address:

Telephone Number:

Pro Se Petitioner (or Attorney for Petitioner)

IN THE FAMILY COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

In the Matter of the	)	FC-G No. <u>(leave blank)</u>
Guardianship)	
	)	PETITION FOR APPOINTMENT OF A
of	)	GUARDIAN OF THE PERSON OF AN
	)	INCAPACITATED PERSON; NOTICE
<u>(full legal name)</u>,	)	OF HEARING
)	
An Incapacitated Person.)	
<u></u>)	

PETITION FOR APPOINTMENT OF A GUARDIAN
OF THE PERSON OF AN INCAPACITATED PERSON

TO THE HONORABLE PRESIDING JUDGE OF THE FAMILY COURT:

Petitioner respectfully alleges as follows:

1. This petition is for the appointment of a guardian of the person of (full legal name), who is an incapacitated person residing or present within the jurisdiction of this Court, pursuant to H.R.S. Sections 560:5-102 and 560:5-302.

2. The following information concerns the above-named incapacitated person:

Name and Address:

Date and Place of Birth:

Social Security Number:

Sex:

Age:

3. Such appointment is necessary because the above-named incapacitated person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning (his/her) person by reason of (describe disability causing

person's incapacitation.) This is based on the Physician's Report (and Social Summary) attached to the List of Exhibits which is submitted separately.

4. The following person is suitable to be appointed guardian of the above-named incapacitated person:

Name and Address:

Telephone Number:

Relationship:

Date of Birth:

Occupation:

Marital Status:

Criminal Convictions:

Testamentary Nomination:

Social Security Number:

5. The names and addresses of the relatives of the above-named incapacitated person required by law, H.R.S. Section 560:5-309(a), to be notified of these proceedings are (note if deceased or whereabouts unknown):

- (a) Spouse or Reciprocal Beneficiary: (name and address, or "none.")
- (b) Mother: (name and address, or "none.")
- (c) Father: (name and address, or "none.")
- (d) Adult Children: (name(s) and address(es), or "none.")
- (e) Other Closest Relative (in the absence of a spouse, legal parent, or adult child): (name and address)

6. The person or agency who presently has the care and physical custody of the above-named incapacitated person is: (name and address of care home, hospital, long term care facility, or if subject lives alone, so state.)

7. The person serving as guardian of the above incapacitated person's estate is: (name and address, or state "none." If the person has been appointed guardian of the property, so state, and provide the case name and number.)

8. The following interested person(s) (has/have) filed with the Circuit Court of the First Circuit, pursuant to H.R.S. Section 560:5-406, a request for notice before entry of any order in protective proceeding relative to the above-named incapacitated person: (name, address, and relationship to subject, or state "none.")

9. Petitioner has made inquiry of all reasonable sources as to the names and addresses of persons in paragraphs 5 through 8, where applicable, and has not been able to obtain information other than as alleged in said paragraphs.

10. The incapacitated person (is/is not) represented by counsel.

11. The incapacitated person (is/is not) expected to attend the hearing. (If not, provide an explanation, and include the following: "The Petitioner respectfully requests the appointment of a guardian ad litem, if deemed necessary by the Court, pursuant to Hawaii Revised Statutes Sections 560:5-303 and 5-309.")

WHEREFORE, Petitioner prays that:

1. A time and place be set for hearing on the issue of incapacity hereof, and that due notice of the foregoing matter and of the time and place of hearing on this petition be given to all required persons.

2. The Court appoint a guardian ad litem, if deemed necessary by the Court, pursuant to Hawaii Revised Statutes Section 560:5-303 and 5-309.

3. The Court find that:

- (a) this Court has jurisdiction in this matter;
- (b) (full legal name of incapacitated person) is an incapacitated person as defined in Hawaii Revised Statutes Section 560:5-101(2);
- (c) appointment of a guardian is necessary as a means of providing continuing care and supervision of said incapacitated person; and
- (d) (name of proposed guardian) is a fit and proper person to serve as guardian.

4. The proposed guardian named in paragraph no. 4 hereof be appointed guardian of the person of the above-named incapacitated person, to continue in office until such guardianship is terminated by order of this Court or by operation of law.

5. Letters of guardianship be issued.

6. The guardian of the person of the above-named incapacitated person shall serve without bond and without compensation.

PETITIONER DECLARES UNDER PENALTY OF PERJURY THAT PETITIONER HAS READ THIS PETITION FOR GUARDIANSHIP AND KNOWS AND UNDERSTANDS THE CONTENTS HEREOF; AND THAT THE STATEMENTS MADE HEREIN ARE TRUE OF PETITIONER'S OWN KNOWLEDGE EXPECT AS TO MATTERS HEREIN STATED UPON INFORMATION AND BELIEF. AS TO THOSE MATTERS, PETITIONER BELIEVES THEM TO BE TRUE.

DATED: Honolulu, Hawaii _____.

(signature)

Petitioner

Name:

Address:

Relationship:

IN THE FAMILY COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

In the Matter of the) FC-G No. (leave blank)
Guardianship)
) NOTICE OF HEARING
of)
)
(full legal name),)
)
An Incapacitated Person.)
_____)

NOTICE OF HEARING

STATE OF HAWAII

TO: (Respondents: List names and addresses of all parties in paragraphs 2, 4, 5, 6, 7, and 8 of the Petition.)

The petition for appointment of a guardian of the person of the above-named person will be heard in the Family Court, Kaahumanu Hale, 2nd Floor, 777 Punchbowl Street, Honolulu, Hawaii 96813, on _____, _____, at _____ m.

If you fail to appear at the hearing, or to file an answer with the Office of the Chief Clerk of the First Circuit Court, State of Hawaii, located in the Kaahumanu Hale, 1st Floor, 777 Punchbowl Street, Honolulu, Hawaii, and whose mailing address is P.O. Box 619, Honolulu, Hawaii 96809, before the date of the hearing, further action may be taken in this cause without further notice to you.

This Notice of Hearing shall not be personally delivered between 10:00 p.m. and 6:00 a.m. on premises not open to the public, unless a judge of the district or circuit courts permits, in writing on the Notice of Hearing, personal delivery during those hours.

Failure to obey the Notice of Hearing may result in an entry of a default and default judgment against the person noticed.

DATED: Honolulu, Hawaii, _____.

Clerk of the above-entitled Court

Pro Se Petitioner's Name (or Attorney's Name and Number):
Address:
Telephone Number:

Pro Se Petitioner (or Attorney for Petitioner)

IN THE FAMILY COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

In the Matter of the	)	FC-G No. <u>(leave blank)</u>
Guardianship)	
	)	LIST OF EXHIBITS
of)	
)	
<u>(full legal name),</u>)	
)	
An Incapacitated Person.)	
<u></u>)	

LIST OF EXHIBITS

The exhibits attached hereto are submitted for filing in
the above entitled proceeding:

- (1. Physician's Report dated _____.)
- (2. _____.)
- (3. _____.)

DATED: Honolulu, Hawaii, _____.

(Attorney for) Petitioner

Pro Se Petitioner's Name (or Attorney's Name and Number):
Address:
Telephone Number:

Pro Se Petitioner (or Attorney for Petitioner)

IN THE FAMILY COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

In the Matter of the	)	FC-G No. <u>(case number)</u>
Guardianship)	
	)	WAIVER OF NOTICE AND CONSENT
of	)	TO GUARDIANSHIP
)	
<u>(full legal name)</u> ,)	
An Incapacitated Person.)	
_____)	

WAIVER OF NOTICE AND CONSENT TO GUARDIANSHIP

I acknowledge receipt of a filed copy of the Petition requesting the appointment of (proposed guardian) as guardian of the person of the above-named incapacitated person and the Notice of Hearing in this action.

I consent to the guardianship, appointment of the proposed guardian, and waive the requirement that I receive notice of the hearing at least fourteen days before the hearing on the Petition.

Also,

- [] I do not want to be notified of any further hearings and understand that the Court may grant the petition without further notice to me.
- [] I want to be notified of all future hearings but do not require that I be given at least fourteen days advance notice.

DATED: Honolulu, Hawaii, _____.

(signature)

Name:

Address:

Pro Se Petitioner's Name (or Attorney's Name and Number):
Address:
Telephone Number:

Pro Se Petitioner (or Attorney for Petitioner)

IN THE FAMILY COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

In the Matter of the	)	FC-G No. <u>(case number)</u>
Guardianship)	
	)	ORDER APPOINTING GUARDIAN
of	)	OF THE PERSON; EXHIBIT A
)	
<u>(full legal name)</u> ,)	
)	
An Incapacitated Person.)	
<u></u>)	

ORDER APPOINTING GUARDIAN OF THE PERSON

This matter came on for hearing on (date of hearing)
before the Honorable (full name of judge), Judge of the Family
Court, First Circuit.

Following that hearing and after full consideration of
all of the evidence, the Court found that:

1. This Court has jurisdiction in this matter;
2. The material allegations of the (full title of
petition) are true;
3. (Subject's Name) is an incapacitated person as
defined in Hawaii Revised Statutes Section 560:5-101(2);

4. Appointment of a guardian is necessary in order to provide continuing care and supervision of said incapacitated person.

5. (Name of Proposed Guardian) is a fit and proper person to serve as guardian.

NOW, THEREFOR,

IT IS HEREBY ORDERED that (Proposed Guardian) be and is hereby appointed guardian of the person of (Name and Birthdate of Incapacitated Person) for the purpose of providing care and attention for said incapacitated person and having custody thereof, and of performing all procedures necessary for the incapacitated person's health, welfare and best interests and pursuant to Hawaii Revised Statutes Sections 560:5-312(a)(4) and (6) to receive funds, including periodic support for the incapacitated person supplied by any government or any agency and tangible property deliverable to the ward and apply the money and property for the support, care and education of the ward, and to exercise care to conserve any excess for the ward's needs. See attached Exhibit A.

IT IS HEREBY FURTHER ORDERED that if the Public Guardian is appointed guardian, the Public Guardian shall have authority to delegate the responsibilities and duties of the Public Guardian to a professional member of the Public Guardian's staff.

IT IS HEREBY FURTHER ORDERED that the guardian shall provide annual reports to the Court of the condition of the ward and of the ward's estate which is subject to the guardian's

possession or control and such other matters as the Court may direct within one year of (the hearing date) and annually thereafter by the (day) of (month) , pursuant to Hawaii Revised Statutes Section 560:5-308A, as amended.

IT IS HEREBY FURTHER ORDERED that the guardian shall serve without bond and without compensation and shall be discharged upon the death of the incapacitated person or upon the death, resignation, removal or determination of incapacity of the guardian or upon further order of the Court, but termination does not affect the liability of the guardian for prior acts, nor the guardian's obligation to account for funds and assets of the ward.

Resignation of the guardian of the person does not terminate the guardianship until it has been approved by the Family Court.

AND IT IS HEREBY FURTHER ORDERED that Letters of Guardianship be issued in accordance herewith.

DATED: Honolulu, Hawaii .

Judge of the above-entitled Court

Pro Se Petitioner's Name (or Attorney's Name and Number):
Address:
Telephone Number:

Pro Se Petitioner (or Attorney for Petitioner)

IN THE FAMILY COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

In the Matter of the	)	FC-G No. <u>(case number)</u>
Guardianship)	
	)	LETTERS OF GUARDIANSHIP
of	)	OF THE PERSON
)	
<u>(full legal name)</u> ,)	
)	
An Incapacitated Person.)	
<u></u>)	

LETTERS OF GUARDIANSHIP OF THE PERSON

(Name of Proposed Guardian) is hereby appointed guardian of the person of (Name and Birthdate of Incapacitated Person) for the purpose of providing care and attention for said incapacitated person and having custody thereof, and of performing all procedures necessary for the incapacitated person's health, welfare and best interests pursuant to Hawaii Revised Statutes Sections 560:5-312(a)(4) and (6) to receive funds, including periodic support for the incapacitated person supplied by any government or any agency and tangible property deliverable to the ward and apply the money and property for the support, care and education of the ward, and to exercise care to conserve any excess for the ward's needs.

If the Public Guardian is appointed guardian, the Public Guardian shall have authority to delegate the responsibilities and duties of the Public Guardian to a professional member of the Public Guardian's staff.

The guardian shall provide annual reports to the Court of the condition of the ward and of the ward's estate which is subject to the guardian's possession or control and such other matters as the Court may direct within one year of (the hearing date) and annually thereafter by the (day) of (month) , pursuant to Hawaii Revised Statutes Section 560:5-308A, as amended.

The guardian shall serve without bond and without compensation and shall be discharged upon the death of the incapacitated person or upon the death, resignation, removal or determination of incapacity of the guardian or upon further order of the Court, but termination does not affect the liability of the guardian for prior acts, nor the guardian's obligation to account for funds and assets of the ward. Resignation of the guardian of the person does not terminate the guardianship until it has been approved by the Family Court.

DATED: Honolulu, Hawaii _____.

Judge of the above-entitled Court

EXCERPTS FROM HAWAI'I REVISED STATUTES

See HRS §560:5-312 General powers and duties of guardian of
the person

EXHIBIT A